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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT  
YELLOWSTONE COUNTY

DANIEL LORD,

Plaintiff,

vs.

TRAVELERS INSURANCE  
COMPANY,

Defendant.

Cause Number DV-14-1313

ORDER

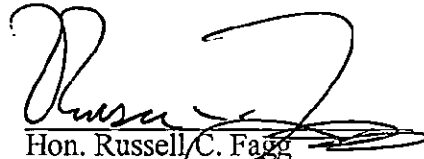
HAVING COME before the Court on plaintiff Daniel Lord's motion to set aside the Judgment entered in his favor and to file an amended complaint the Court is prepared to rule. A hearing was not requested. The matter is unopposed because no defendant has made an appearance. The time remaining for service of the original amended complaint has not yet passed under Rule 4(t), M.R.Civ.P. After the Travelers Insurance Company was served, by appointment, through its agent the Commissioner of Insurance, the Clerk entered default. Mr. Lord then filed a motion for entry of judgment. A hearing was held after which the Court entered Judgment. Mr. Lord has now moved the Court to set aside that judgment pursuant to Rule 60, M.R.Civ.P., and to file an amended complaint pursuant to Rule 15, M.R.Civ.P. Having considered the substantive law and arguments the Court will grant the motion.

The Court finds justice requires the original Judgment be set aside. Applying it prospectively would not longer be equitable. Mr. Lord has been informed of the identity of the defendants and he should be permitted to proceed against them. The time remaining for service under Rule 4(t), M.R.Cov.P., has not yet run.

1 The amended complaint identifies the Defendants who insured and handled his claim, or  
2 their parent corporation, and the matters involve the same conduct, transaction and occurrence set  
3 out in the original complaint. Rule 15 allows amendments to correct the identity of a defendant  
4 and to add a new defendant involved in the same transaction or occurrence. The amendment  
5 relates back when, within the time for service under Rule 4(t), the Defendants receive notice  
6 of the action and knew or should have known the lawsuit would be brought. Because time  
7 remains for service under Rule 4(t), M.R.Civ.P., and because Defendants have been informed of  
8 this action they will not be prejudiced in their defense. Defendants sought a release of these  
9 claims during the handling of the underlying matter. Mr. Lord refused. As a result Defendants  
10 knew or should have known Mr. Lord would file this claim. The Court notes the liberality with  
11 which amendments should be permitted. The Court finds this policy to liberally permit  
12 amendments should be applied under the facts of this case. The purpose is to arrive at a  
13 judgment on the merits when possible. The requirements of Rules 15 and 60 have been satisfied.

14 THEREFORE, IT IS HEREBY ORDERED the Judgment in this matter is set aside and  
15 the Clerk shall file Mr. Lord's Amended Complaint.

16 DATED this 1<sup>st</sup> day of May ~~April~~ 2017

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19 Hon. Russell C. Fagg  
District Court Judge  
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